Dear Jim, 1/15/77

Writing the attached letter on 1448 was the last thing I did last night.As usual a fell asleep immediately. I had difficulty staying asleep only because something impelled me to get up and at it again. This happened at least three times. Although as usual I had no trouble going back to sleep immediately, and I mean immediately close to literally, I final decided to get out of bed after not much more than five hours of sleep. I believe ones of the reasons is that this remains on my mind but not in what I believe would be the usual reason. This is part of why I write again.

When you phoned I had dozed off looking at the TV news after supper. I started to write you for the reason stated, if you do as I want you to do I do not want there to be any reaction against you. They there were interruptions. The one that took longest wrenched my mind onto other subjects. It was a call from my best source on the CIA and drugs and mind-bending. Meanwhile, I kept drinking, as I do to relax. I was up several hours later than usual, drinking this much longer than usual but I was not drunk. By the end I may have been loosened a bit by it and when I can't use my right forefinger for typing my bad typing is worse, but I'm sure that what I said is what I mean and what I think at some point I hope we can sit down and explore. Time is always the problem.

Do not believe that I am depressed by this or in that kind of a mood now. Neither is the case. I'm listening to WAMU's early-morning boogie-woogie and blues program and it always lifts me, particularly what is on now,the early fold antecedents.

Getting any one of these records or any combination of them had no great meaning for me. What does is the overall. Each record I obtain interferences with something else I want to do. I can do only so much so not getting any record in and of itself loses any real significance for me.

There is no reason to be depressed from our record. We have a fantastic record. The odds are toughest on us, we are virtually alone and not even the Nader people can come close to our record of success, however one measures success.

Thencircumstances under which we makes our efforts limit what we can do and what we can reasonably hope to do. We, not those like the Nader people, are in the nitty-gritty. Opposition therefore is greater

These circumstances in 1448 are for all practical purposes beyond our control. The reason for this is Robinson, actually in this case and symbolically. All the judges with whom we have had experience are, each in his own way, the same, with Gesell being the probably exception. Gesell gave the government the right issue to confront in his own way and they opted the course presenting least trouble for them. We have forced a limited amount of this out of Green.

With time as precious as it is for us our immediate, perhaps most limiting consideration is time. Yours is precious to me. The judges do not care about time, not even their own time. All appear entirely unwilling to confront the government, whatever the reasons. Law and fact are all our way. Ordinarily this would be more than enough. It has not been. The government knows nothing is going to happen to it so there is no dirty trick that is too dirty. That they have practised so many provides us with one of the possibilities of contedding with them and forcing some change. It is from our method of contending that we have had our successes. We force the issues in what you call the battle of the affidavits. In my view we have not forced this enough. To a large degree circumstances preclude our doing more. There is not much we can do about these circumstances. If we are to proceed with less waste in time we have to get around these circumstances. This presents a different set of problems. Addressing them begins with assessing our own priorities. So that you can do this I keep assuring you that getting or not getting any one set of records is not the most important consideration to me. This is foreign to law training and practise and most litigation. It is not to say that I do not want the records. It is to say I do not want to pay too much for the effort. What the government keeps us from doing is exterting too great a cost. I see other things as worth more. If we can do anything and how is what I have in mind. I think you can realize that this has been on my mind since mid-summer, when Green made fine speeches and did nothing except take offense when she had to confro nt herself. That she is taking this out on us bothers me not a bit.

In a sense it is helpful. My work differs from that of others in its scope and thrust. Ed Williams has written with some exaggeration recently that it is Balzacian in the sweep of its social commentary. But my work does show that the institutions of society do fail. One of these institutions is the judiciary. This also involves the government's corruption of the law and the judiciary. Together they are our current problem, leading to what I'm trying to get at, what we can do and what the odds are.

The conditions of my life and work and perhaps my own personality have denied me periods of long meditation. I can look back and see when I perceived the need for change and still realize that it was not the result of deep and long thought. But I do see that it was right, that the time for change had come and that as best I can now see the overall the direction in which I was trying to move is the correct one.

For all that lawyers will find wrong with it and with whatevercost you may chose to attribute to it - you have mentioned none and I have one above - when I was finally able to address Green on this it was correct and if I said less than I had planned I said what had to be said. I said that which the judges are going to have to face and live with in these cases and what we have to force the government crooks to live with and perhaps face. This is their Achilles heel, there one. This for example is why I want to use the punitive provisions. It is why I want to get another and now much stronger affidavit on perjury before Green and in that record. It is one of the reasons I believe andhave for months believe that we have to shift to the damage suit approach and with it a lumping of all the old cases and all the agencies, whatever the risk. It has great advantages for you and many importances for me and it in its own way also gets to the nitty-gritty.

In a sense making Robinson face Robinson is important to this, too. We have one kind of record in these cases of presenting the most solid fact and never been disproven on fact or any other allegation. That is not enough because we also have a record of infinite patience and of taking all this crap except for an occasion allegation of perjury that nobody pays any attention to.

You speak often of how judges do not like to be reversed. I believe you. I also believe this has broader application for us particularly because of the subject matter of these cases. You took the absolutely correct first step in this spontaneously when Pratt threatened us. He backed off in shocked surprise when you stoodup to him. He even expressed it, then and there. So in the context of the subject and this unique act we have to make the judges and all the other institutions and representatives of institutions face themselves. If we do not prevail at first or even at all is not the essential thing. Making the effort is, I think, essential and I do think the odds are with us on it. Regardless of his initial reaction I do not believe Robinson will want a record of himself as what in effect is a judicial Tom and that in time he will realize this and straighten up and guide right, not just make fine promises, as with Green, and not keep them. In letter and in spirit this is a different law. It really is what I have always called it, the essence of the American contribution to government, the right of the people to participate in it. The only think wrong about these fourth of July speeches on its become effective is that the orators were not sincere. The words are perfect. This gives us a strength, a special handle, and we must, I thunk, not only use it but use in in a manner that makes the kind of opposition, denial and frustration of effort if not impossible at least of possible cost to those who are responsible for it.

This may sound Pollyanna-like but I do mean it and I do think it has a good chance. What people do not understand about me is that I adher to these ancient American principles. Most of those who dislike me and my way have no principles or fear these. While my expression is often taken as violent by today's standards, even that, I believe, has these roots. In part at least it is because in order to write I have to feel and feeling I have to express what I feel. But I believe the feeling, whether or not the expression is acceptable today, is appropriate and comes from what can be our strength in these matters. My one concern is that in taking this course you not be vulnerable. Because I do not want this and do want to take this course is why I began to write as I did last night and add to it this morning.

Much of this is instinctive with me. The instinct is the end product of yearsand of experiance, some crucible experience. If you have read the State tiles I have received you have a glimmer of some and I think you ,ight well wonder how I was able to turn that around, all that power, all that fascistic willingness to use it and use of it. I did to the point where nobody dares mention it to my face. There are not many people, especially not many young people, who have laws passed to make them criminals when they are the opposite of criminal. Now how could I have survived that. How could I have avoided going to jail when I was brokeax and unemployed and Alger Hiss have gone to jail? I could add to this record of doing the seemingly impossible and to surviving such powerful enemies, which is what they made themselves.

In seeking to encourage you to see it this way I also remind you of what we have learned together in some of the many difficuet situations we have faced. Often what we could and could not do was beyond our control. When I failed in some of these, as I did, it was because I was not faithful to my way of the past. One example is when I was silent when McHae's malpractice case was interrupted. That was my mistake, not yours andit was a very serious mistake in a number of ways. But we can look back on what I wanted to do and we could not do and see that whether or not they were in accord with normal conc cepts they were correct. To a degree I think we can do this with the FOIA cases.

It is over-simplification but what we now have to do is try these cases on the judges. For reasons I will discuss with you if you want this gives us the intellectual jude of the present situation, especially because the government has already started its effort to weaken the law and because there is now a new administration. I do not mean that a new administration means reform. it does not. The bureaucrats will be the same. But the political situation of a new administration when it becomes aware that there will be public hearings on these questions will force new considerations on it and they can work our way. There will be a few in teh Congress who will feel this way and on the right committees.

Nothing is impossible. Would you have thought when I went after him that Czar would go- and so soon? I am not claiming his scalp on my belt. But he is gone and we do not know anyone else who went after him. Look at the changet in Sprague's situation. Do you know anyone else who went after him? And with those in the media who are most opposed to me.

Timing is xxxxx also imprtant. I do not know if my timing in making an approach to Tip O'Neill is right or if the manner of that approach is. I do know that earlier I should not have and I do believe that later would be too late. We'll see and we have nothing to lose but the time writing him took.

In a sense this boils down to my having faith, after all these years and experiences I hope you never have, in what is trainedx out of people by all their education, especially law education, formal and in court.I submit that my record supports this faith.

I hope you will agree with me and try to go this way. If not as always do what you think you should. But I do believe that even a simpe formulation of laying responsibility on the judges for making what we should have done impossible will be a pweerful factor before all this is over. Pratt has made depositions imposible. Robinson ruled against them, gave us an alternative and then denied us that. If he grants it next month it means nothing and a record of it can mean something. So just go ahead and tell these characters that you are not able to represent your alient as you should and would prefer to because of them and official opposition to the law. As long as we are not hung up on getting any particular record we are in a no-lose situation. For me the one certain no-win situation is the one I am in. Thinkx only of what you have wanted me to get on paper and I have not been able to do. I am past the point where it bugs me but I am not past the point of wanting to do that work. I have, I think, adjusted to the realities. But I would like to try to change them in what I believe is the one way that holds promise without compromise on principle or objective.

Best,